S.B. CIVIL MISC. APPEAL NO.166/2007.
Kari Lal Vs. Roda & Ors.

Date of Order :: 11th January 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Sandeep Sarupariya, for the appellant.

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This appeal has been preferred by the claimant against the common award dated 29.10.2005 made by the Motor Accidents Claims Tribunal [Additional District Judge (Fast Track) No.6], Udaipur insofar it relates to Claim Case No. 388/2005 whereby the Tribunal has awarded Rs.80,000/- towards compensation for the loss suffered by him due to the injuries sustained in accident and has exonerated the insurer of its liability.

According to the claimants of five claim applications made before the Tribunal, the accident in question occurred on 06.12.2003 at about 3:00 p.m. near Falasiya when a truck bearing old registration No. RJ 20-2326 and new registration No. RJ 27 G 9454 overturned causing varying injuries to different persons, whose capacity shall be referred hereafter; and two of them, Hakra and Manna Lal succumbed to the injuries while Kari Lal (present appellant), Sohni and Manna Ram sustained simple and grievous injuries. It appears that all the five claim applications were contested by the insurer and on

the pleadings of the parties, the Tribunal proceeded to frame the following consolidated issues for determination of common questions involved in the claim applications:-

> "1. आया दिनांक 6.12.03 को विपक्षी संख्या एक श्री टिलुराम द्वारा वाहन संख्या आर.जे. 27 जी 9454 को गफलत व लापरवाही से चलाने के कारण सोहनी कारीलाल, मन्नाराम के शरीर पर साधारण एवं गंभीर उपहति कारित हुई जिसके कारण हकरा व मन्नालाल की मृत्यु कारित हुई ?
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> 2. आया प्रार्थीगण क्लेम में बताई गई राशि या अन्य कोई राशि प्रतिकर के रूप में विपक्षीगण से पाने के अधिकारी है, यदि हां तो कितनी व किस किस से व किस कदर ?
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> 3. आया विपक्षी बीमा कंपनी द्वारा जवाब में उठाई गई आपत्तियों के आधार पर उसका कोई दायित्व नहीं है ?
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> 4. दादरसी ?"

After taking evidence and hearing the parties, the Tribunal has proceeded to consider the questions involved in issue No.1 and has referred to the statements of the appellant Kari Lal who has deposed as AW-1 that he was travelling in the said truck; that Hakra, Manji, Manna Lal and himself alighted from the vehicle that proceeded ahead but then came in reverse and capsized crushing Hakra and Manna Lal beneath. The Tribunal has noticed the assertions as made by the appellant Kari Lal that at the time of accident, he was not sitting in the truck but has found with reference to the police

investigation papers that it was nowhere mentioned that the vehicle hit the pedestrians. The Tribunal has disbelieved the assertion on the part of the appellant Kari Lal that himself and others had alighted from the truck and has noticed that it was not mentioned in his petition that he was on foot and the truck hit him after coming in reverse. The Tribunal has observed,-

> "कारीलाल ने अपनी पीटीशन में कही भी यह नहीं लिखा कि पैदल-पैदल चल रहे थे और ट्रक ने रिवर्स में आते हुए उसको टक्कर मार दी । यह पीटीशन अभिलेख का भाग है । अत: कारीलाल की मौखिक साक्ष्य अभिलेख के विरूद्ध होने से विश्वसनीय नहीं है ।"

The Tribunal has thereafter referred to the statements of other witnesses and has found that the victims were travelling in the said truck when the same capsized causing injuries to the occupants, two of whom succumbed.

While dealing with the question of liability of the insurer in issue No.3 again the Tribunal has, inter alia, referred to the statement of the present appellant Kari Lal and has found that admittedly he was not travelling as a labourer in the truck in question. The Tribunal has observed,-

> "जब हम पत्रावली पर मौजूद इस साक्ष्य को देखे तो यह स्पष्ट है कि ए.ड. 1 कारीलाल ने मादडी से इस ट्रक में काकण सागवाडा जाने के लिये बैठना बताया और यह कहा कि उसने किराया नहीं दिया और ड्राईवर से जान पहचान होने के कारण उसे बिठाया गया । इस तथ्य से यह स्पष्ट है कि ए.ड.1 इस ट्रक में बतौर मजदूर यात्रा नहीं कर रहा था । इसी ए.ड. 2 (sic) कारीलाल का प्रतिपरीक्षण में आगे

> स्वीकारोक्ति है कि वह ट्रक में मजदूर की हैसियत से यात्रा नहीं कर रहा था । यह तथ्य भी इस बात को पुष्टि करता है कि कारीलाल माल वाहन वाहन में बतौर मजदूर यात्रा नहीं कर रहा था । "

The Tribunal has also referred to the testimony of other witnesses and has ultimately found that each of the victim was travelling as unauthorised passenger in the goods vehicle and, therefore, the insurer was not liable towards compensation.

Taking up quantification of compensation in relation to the appellant Kari Lal, the Tribunal has noticed his assertion of earning as a mason and has put an estimate on his monthly income at Rs.3,000/- and his age at above 45 years. The Tribunal has noticed two grievous injuries suffered by him of fracture of neck of the humerus bone and of calcaneum ankle. The Tribunal has also referred to the disablement certificate (Ex.18) stating his disability at 17% with the following observations,-

> “Pain & difficulty in working, unable to lift weight, Abduction of left shoulder is limited 0-90º, Pain & difficulty in walking, Left ankle movement moderately restricted, limping +, difficulty in Squatting. Permanent disability is 17% (Seventeen percent).”

Though the Tribunal has found the certificate lacking in particulars about the strength of muscles and about the

examination conducted yet has put an estimate on disability at 12% and with application of multiplier of 13 has assessed pecuniary loss at Rs. 56,160/-. The Tribunal has also allowed Rs.3,235/- towards treatment expenditure, transportation, attendants and special diets, Rs.18,000/- for six months' loss of income and Rs.2,000/- towards two other simple injuries and in this manner, has assessed total loss for the claimant at Rs. 79,395, rounded up to Rs. 80,000/- and has made the award of compensation in this amount against the owner of the vehicle involved in accident.

Having heard learned counsel for the appellant and having perused the award impugned, this Court is clearly of opinion that the award in question does not call for interference at the instance of the appellant.

So far exoneration of the insurer is concerned, in view of the uncertain stand taken by the appellant regarding his capacity qua the vehicle in question and about the facts relating to the accident, it does not appear appropriate to take up consideration of the said finding on exoneration of the insurer at the instance of the appellant who has been found to be a gratuitous passenger in a goods vehicle and has been found making deposition not in conformity with the averments made in the claim application.

So far quantum of compensation is concerned, of course, the award as made by the Tribunal appears to be restrictive but cannot be said to be too low or grossly inadequate when examined in the context of the injuries sustained by the appellant of fracture of neck of the humerus and of calcaneum ankle; and disablement as opined by Medical Board. In the overall circumstances of the case and for want of necessary particulars, the Tribunal cannot be said to have erred in not believing the disablement certificate as it is, and in putting reasonable estimate of disability at 12%. The Tribunal has of course restricted awarding compensation on treatment expenditure and so also on attendants and special diets but then, has allowed loss of earnings for six months at Rs.18,000/- and has further allowed Rs.56,160/- towards loss of future earning capacity.

In the ultimate analysis, there does not appear any such gross deficiency or insufficiency in the quantum of award so as to warrant interference in appeal.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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